

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRANCISCO VEGA, JR.,

Plaintiff,

v.

M. SOTO, et al.,

Defendants.

1:22-cv-000471-JLT-EPG (PC)

ORDER RE: MOTION FOR
CLARIFICATION

(ECF No. 79).

Plaintiff Francisco Vega, Jr., is a state prisoner proceeding *pro se* in this civil rights action. This case proceeds on Plaintiff's First Amendment retaliation claims against Defendants Soto, Noujaime, and Borba. (ECF No. 15). This matter is before the Court on Plaintiff's motion for clarification. (ECF No. 79). Before addressing the motion, some background information is helpful.

On December 18, 2024, Plaintiff moved for permission to orally depose by remote means two employees of Valley State Prison Plant of Operations—Billy Moore and Martin Herroz. (ECF No. 69). On January 19, 2024, H. Castro, the Litigation Coordinator at Valley State Prison (VSP), where the events in the complaint occurred, filed a declaration stating that: (1) Herroz has agreed to be deposed; (2) Billy Moore is no longer employed with the CDCR; and (3) VSP can accommodate a remote deposition. On January 25, 2024, the Court issued an order granting Plaintiff's motion as to Herroz and directing him to confer with counsel about a date and place that the deposition could proceed. (ECF No. 76). However, as Billy Moore's whereabouts were

1 unknown, the Court denied Plaintiff's motion as to Moore, but issued Plaintiff subpoena
2 documents (Forms AO 88B and USM-285) to subpoena VSP to potentially learn Billy Moore's
3 location.

4 Turning to Plaintiff's motion for clarification, he states that he conferred with defense
5 counsel, Attorney Mohammad Iranmanesh, to schedule a deposition for February 22, 2024, at 10
6 a.m. via Zoom. However, rather than agreeing to this date and time or conferring regarding
7 another acceptable date and time as directed by the Court's order, defense counsel insisted that
8 Plaintiff issue a subpoena for the deposition.

9 Plaintiff now requests clarification if a subpoena is needed, asking whether he can use the
10 forms previously provided, and if not, if the Court will accept the forms he has filled out and
11 directed to Billy Moore. The provided forms seek to require Billy Moore's attendance for a
12 deposition.

13 A witness may voluntarily appear at a deposition at the date and time agreed upon by the
14 parties. However, if a witness does not so agree, which appears to be the case here, Plaintiff must
15 complete a subpoena and the Court will have it served on Herroz to compel his attendance. Given
16 that the subpoena will command testimony at a specific date and time, Plaintiff should complete
17 the subpoena for the date and time of his choosing, leaving enough time for the Marshals office to
18 serve the subpoena. Once the subpoena is served, Herroz will be commanded to appear at that
19 date and time. A failure to appear at that date and time will subject Herroz to sanctions.

20 Specifically, Federal Rule of Civil Procedure 30 governs oral depositions. A deponent's
21 attendance may be compelled by subpoena under Rule 45, which will command the witness to
22 appear at a specific date and time. Fed. R. Civ. P. 30(a)

23 A party who wants to depose a person by oral questions *must give reasonable*
24 *written notice to every other party*. The notice must state the time and place of the
25 deposition and, if known, the deponent's name and address. If the name is
26 unknown, the notice must provide a general description sufficient to identify the
27 person or the particular class or group to which the person belongs.
28 Fed. R. Civ. P. 30(b)(1) (emphasis added).

29 Thus, the Court will send Plaintiff Form AO88A (the subpoena form) and USM-285 (the
30 Marshals form for service) to subpoena Herroz's attendance at a deposition.

31 Additionally, the Court will extend the case deadlines to allow Plaintiff time to take the

1 steps laid out in this order. Plaintiff will be directed to return the relevant documents at a date of
2 his choosing, keeping in mind the above requirements and the fact that any subpoena will take at
3 least 14 days for the United States Marshals Service to serve before the deposition can take place.

4 Plaintiff shall make arrangements with his prison for any deposition that he intends to
5 take, ensure that he provides the connection information for the depositions, and is reminded that
6 he must pay the costs for Marshals service as he is not proceeding *in forma pauperis*.

7 As to Plaintiff's question about the documents (Forms AO88B and USM-285) that he
8 returned, he is advised that he filled them out incorrectly. Notably, he attempts to direct Billy
9 Moore to appear for an oral deposition; however, as discussed in this Court's prior order (ECF
10 No. 76), Plaintiff first needs to locate Moore as he is no longer employed with the CDCR. The
11 Court sent Plaintiff these documents so that Plaintiff could subpoena documents from VSP to
12 learn Moore's address, not to compel Moore's deposition. After Plaintiff learns Moore's address,
13 he can ask the Court for a separate subpoena to compel his attendance at a deposition.

14 Accordingly, IT IS ORDERED as follows:

- 15 1. Plaintiff's motion or clarification (ECF No. 79) is granted as his questions have
16 been addressed in this order.
- 17 2. The Clerk of Court is directed to send Plaintiff a copy of form AO 88A and a copy
18 of form USM-285.
 - 19 i. These documents are to be used to subpoena Herroz to attend an oral
20 deposition.
 - 21 ii. Plaintiff shall fill them out within a date of his choosing, but he must keep
22 in mind the case deadlines specified below and that the Court must receive
23 the documents *at least three weeks before* the date requested for the
24 deposition to allow for Marshals service.
 - 25 iii. Plaintiff is also directed to review the requirements, including those
26 addressed above, for conducting a deposition, such as providing notice to
27 other parties under Rule 30(b)(1).
- 28 3. The Clerk of Court is directed to send Plaintiff a copy of form AO 88B and a copy
of form USM-285.

i. These documents are to be used to gain documents from VSP to identify the location of Billy Moore.¹

ii. Plaintiff has thirty days from the date of service of this order to complete and return form AO 88B and form USM-285.

4. For the limited purpose of allowing Plaintiff to depose Herroz and Moore, the non-expert discovery deadline is extended to April 15, 2024, and the dispositive motion deadline is extended to May 30, 2024. (ECF No. 68).

IT IS SO ORDERED.

Dated: **February 14, 2024**

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE

¹ As noted above, once Moore is located, Plaintiff may request a subpoena to compel Moore to attend a deposition.